

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

WARREN V. THOMPSON,

Claimant-Appellant,

v

Case No. 06-1267-AE

Honorable Mary A. Chrzanowski

ST. JOHN MACOMB HOSPITAL,
and STATE OF MICHIGAN, DEPARTMENT
OF LABOR AND ECONOMIC GROWTH,
UNEMPLOYMENT INSURANCE AGENCY,

Appellees.

OPINION AND ORDER

Plaintiff has filed a motion for oral argument after the Employment Security Board of Review ("Board of Review") denied Plaintiff's claim for unemployment benefits due to lack of jurisdiction for Plaintiff's failure to timely appeal.

Plaintiff filed for unemployment benefits on February 17, 2005, after he was fired from St. John Macomb Hospital. Upon re-determination by the Unemployment Insurance Agency, Plaintiff was determined eligible for unemployment benefits on May 9, 2005. The Michigan Bureau of Hearings and Unemployment Compensation Appeals heard the appeal on August 31, 2005 and issued a decision on September 27, 2005 for Defendant, St. John Macomb Hospital. Plaintiff filed an appeal with the Board of Review on October 28, 2005. On two subsequent occasions the Board of Review denied Plaintiff's appeal due to lack of jurisdiction because the appeal was received beyond the 30-day period for filing appeals under section 33 of the Michigan Employment Security Act.

Plaintiff argues in his request for oral argument that he did not receive the September 27



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judgment against him in a timely manner. Plaintiff claims that he did not received notice until October 7, 2005 and that he was under the impression that the 30-day appeal process begins when notice is received. Plaintiff contends that he contacted the Board of Review on October 24, 2005 to ask whether his appeal was received and was informed that his appeal had not been received. Plaintiff further asserts that he received error messages when attempting to fax the appeal to the Board of Review. Plaintiff argues that he called the Board of Review and was told that the fax machine was turned off during non-business hours and was unable to send a fax of appeal until October 28, 2005.

Defendant, State of Michigan, Department of Labor and Economic Growth, and Unemployment Insurance Agency, argues that Plaintiff abandoned his appeal because he cited no legal authority to establish his position and that Plaintiff's appeal was properly dismissed because it was received outside of the 30-day appeal period and Plaintiff cannot show good cause for lateness.

A reviewing court must affirm the Board's decision if it conforms to the law and if there is competent, material, and substantial evidence to support the decision. MCL 421.38(1). A circuit court must affirm judgments within the Agency's discretion, unless the court can define a controlling rule of law, which proves the agency decision unfounded. *Peaden v Employment Security Comm*, 355 Mich App 613, 629; 96 NW2d 281 (1959).

An interested party within 30 days after the mailing of a copy of a decision of the referee or of a denial of a motion for rehearing may file an appeal to the board of review, and unless such an appeal is filed the decision or denial shall be final. MCL 421.33(2). The board of review may, for good cause, reopen and review a prior decision of the board of review and issue a new decision after the 30-day appeal period has expired, but a review shall not be made unless

the request is filed with the board, or review is initiated by the board with notice to the interested parties, within 1 year after the date of mailing of the prior decision. MCL 421.34. Applicable administrative rules have defined "good cause" as:

Rule 109. As used in these rules, "good cause" includes, but is not limited to, any of the following:

- (a) Newly discovered material evidence.
- (b) A legitimate inability to act sooner.
- (c) A failure to receive a reasonable and timely notice, order, or decision.
- (d) Untimely delivery of a protest, appeal, or a commission document by a business or government agency entrusted with delivery of mail.
- (e) Having been misled by incorrect information from the commission, referee, or board of review.

2002 AC, R 421.1109.

This Court does not believe that Plaintiff's brief should be dismissed without consideration because of Plaintiff's failure to follow the court rules for appellate briefs. This is not a case where Plaintiff "announce[s] a position or assert an error and then leave[s] it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments." *Mitchem v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Plaintiff adequately addressed the issue of notice in his appeal.

This Court is satisfied that the Request for Oral Argument should be denied. Plaintiff's appeal for rehearing was filed on October 28, 2005, one day after the required day for filing. Therefore, it must be determined whether the Plaintiff has established "good cause" for the Board of Review to reopen and review their prior decision denying Plaintiff's claim according to 2002 AC, R 421.1109.

Plaintiff's does not claim that there has been any newly discovered material evidence that would establish good cause. Therefore, subsection (a) does not apply to Plaintiff.

Plaintiff does not establish any legitimate inability to act sooner in filing his appeal claim. Plaintiff acknowledges he knew his appeal was not received three days prior to the deadline. (Appellant's brief, p 1). Further, Plaintiff spoke to the Board of Review the day the appeal was due and acknowledges that he was told the fax machine was only on during business hours. *Id.* Plaintiff gives no legitimate reason why he was unable to fax his appeal on the due date or any day prior to the deadline. This Court finds that Plaintiff's has not shown an inability to act sooner in filing his appeal claim and does not satisfy subsection (b).

Plaintiff does not establish any reason why the reception of his decision 21 days prior to filing an appeal was not reasonable and timely. Plaintiff admits in his brief that the Board of Review is less than a 20 minute drive. (Appellant's Brief, p 2). Plaintiff does not give any reason why he could not have personally delivered or faxed the appeal during the Board of Review's business hours. This Court finds that Plaintiff's possession of his judgment for 21 days prior to the appeal deadline does not satisfy subsection (c).

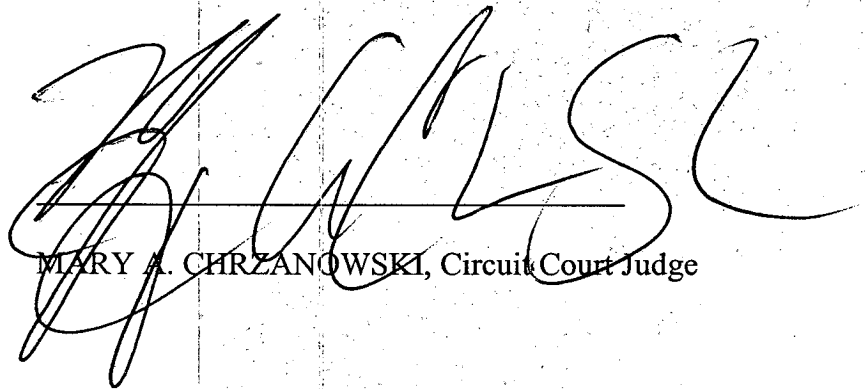
Plaintiff does not offer any proof that he sent a written protest of the judgment in September. Plaintiff does not show any documents for proof of mailing. Therefore, this Court finds that there was no showing of untimely delivery by a governmental agency entrusted with delivery of mail to satisfy subsection (d).

This Court finds the Plaintiff was not mislead in this action. Plaintiff's belief that the appeal is due 30 days after reception of judgment is belied by the bold face print on the appeal form that clearly states "APPEAL OR REQUEST MUST BE **RECEIVED** ON OR BEFORE **OCTOBER 27, 2005.**" (T 8/31/05, p 43). Further, even if the fax machine at the Board of Review was not on when business was closed, Plaintiff gives no reason to explain why he was unable to fax his appeal during business hours. As Plaintiff was able to call the Board of Review

to determine the fax number and its hours of operation, Plaintiff was just as able to submit his appeal during business hours. Therefore, this Court finds that there was no showing of untimely delivery by a governmental agency entrusted with delivery of mail to satisfy subsection (e).

For the reasons set forth above Plaintiff's Request for Oral Argument is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last pending claim and this case remains closed.

IT IS SO ORDERED.



MARY A. CHRZANOWSKI, Circuit Court Judge

Date: JUL 27 2006

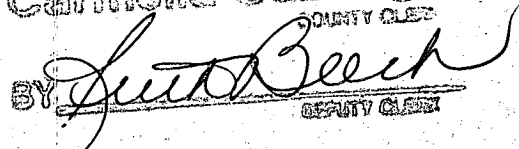
CC: Shannon N. Wood
Warren V. Thompson

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Carmelia Sabaugh

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